

18 JAN 1979

MEMORANDUM FOR THE RECORD

STAT FROM: [REDACTED]
Procurement Management Staff, OL
SUBJECT: S. 1264 - Federal Acquisition Act

STAT 1. On 11 January 1979, [REDACTED] (OL/PMS),
[REDACTED] (L&PLD/OGC) and [REDACTED] (OLC) met with
STAT Mr. Brian Walsh, a staff member of the Subcommittee on Federal
Spending Practices and Open Government (a subcommittee of the
Senate Committee on Governmental Affairs), to discuss subject
bill.

2. Attached hereto is a copy of the "talking paper" used
during this meeting. A summary of the issues discussed is as
follows:

a. Title II of the bill is entitled "Acquisition
by Competitive Sealed Bids" which is a proposed new name
for what is now called "Formal Advertising." Under
Section 201, when all of seven conditions are met, the
competitive sealed bid method of acquisition must be
used. Historically, this Agency has never used formal
advertising and it is our position that the nature of
CIA activities does not lend itself to the publicity
aspects of this acquisition method. The second of seven
conditions to be met which makes use of the sealed bid
method mandatory is "(2) the Agency need can be prac-
tically defined in terms not restricted by security or
proprietary design." We advised Mr. Walsh of our concern
that the negotiation of unclassified association contracts
might be jeopardized by a narrowly construed definition of
the word "security" and requested that the words "opera-
tional requirements" be added either before or after the
word "security." Mr. Walsh stated that he was sympathetic
to our position and suggested that, instead of changing the
wording in the bill itself, we should provide him with the
appropriate language to insert into the legislative history
of the bill which will set forth the understanding that
the term security applies to the CIA's determination that
unclassified association contracts should not be entered
into by using the sealed bid acquisition method.

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SUBJECT: S. 1264 - Federal Acquisition Act

b. The second major issue with the bill centers around Section 512 entitled "Publication of Intent." This section sets forth the basic requirements for publicizing proposed acquisitions of above \$10,000 in the daily publication "United States Department of Commerce Synopsis of the United States Government Proposed Procurement, Sales, and Contract Awards." Section 202, Section 302, and Section 304 of the bill have provisions requiring utilization of the publication requirements of Section 512. We advised Mr. Walsh that for the same reasons we were opposed to the CIA becoming involved in the sealed bid process, we were opposed to the publicizing of our acquisitions. (Acquisitions which for security reasons are of a classified nature do not have to be publicized.) Again Mr. Walsh stated he would view the term "security reasons are of a classified nature" very broadly and requested that we provide him the necessary language for insertion in the legislative history of the bill which would set forth the understanding that even unclassified association acquisitions are not subject to the publicity requirements of the bill.

c. Section 306(b) sets forth the right of the Comptroller General of the United States or his authorized representative to inspect the plants and examine any books, documents, papers, records, or other data of a contractor or his subcontractors. By virtue of Section 403j, 50 United States Code (Section 8b of the CIA Act of 1949), sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the director and every such certificate should be deemed a sufficient voucher for the amount therein certified. We are concerned that Section 306(b) may supersede Section 403j, 50 United States Code unless language is inserted into S. 1264 to stop this from happening. It should be noted that Section 403j, 50 United States Code is not cited in the bill under Title IX Amendments and Repeals. Mr. Walsh stated that he was not in a position to make this change without consultation with the General Accounting Office. This problem requires immediate attention by our Office of General Counsel and the Office of Legislative Counsel.

SUBJECT: S. 1264 - Federal Acquisition Act

The issue centers around nuances involving implied and expressed repeals of prior law. There is a principle that subsequent legislation is not presumed to effectuate a repeal of existing law in the absence of that expressed intent. However, there are circumstances in which subsequent statutes amend or repeal prior statutes without specifically citing the prior statute.

d. Section 515 authorizes and directs the Administrator of Federal Procurement Policy, in consultation with the Small Business Administration, to initiate periodic reviews of acquisition programs within the executive branch with the objective of making minority business participation in Government contracting more effective and assuring that minority businesses have full opportunity to compete for Government contracts. We stated our opposition to having our acquisition programs reviewed by the Administrator for Procurement Policy and/or the Small Business Administrator because of our statutory responsibility to protect sources and methods. Mr. Walsh stated that, based upon the politics of this provision, he did not believe a special exception for the CIA would be entertained. However, he did state that the probability of OFPP reviewing our acquisition programs was remote.

e. Section 701 defines the role of the General Accounting Office (GAO) in the "protest" procedure. The CIA, by virtue of a letter dated 31 May 1971, has already informed the Comptroller General of the United States of our position that the GAO may review protests involving CIA acquisitions, whether classified or not. The letter states that a protest involving a classified acquisition should be filed with the CIA contracting officer who will take the necessary steps to transfer it through security channels to cleared personnel in the GAO. We advised Mr. Walsh that we believed that the statute should contain some language with regard to classified acquisitions. Mr. Walsh indicated that he agreed and made a note to develop appropriate provisions.